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NO. 75-1355

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.;

Appellants,

vs.

KAREN HEIN, ET AL.

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Opinion Below

The opinion of a panel of three judges of the United States District Court of the Southern District of Iowa is reported at 402 F. Supp. 398 and appears as Appendix A and B, pp. 1a-25a respectively, of Jurisdictional Statement filed herein by Earl Butz, Secretary of Agriculture, Appellant, on March 5, 1976.

Jurisdiction

The order of the three-judge panel convened herein enjoined Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa from enforcing it's statewide regulation which deducted from income a "training allowance" for

transportation expenses allotted to food stamp recipients under an approved State Individual Education Training Plan for recipients in the Aid to Dependent Children Program (ADC), and enjoined the Secretary of Agriculture from enforcing a like regulation 7 C.F.R. 271.3(c)(1)(iii)(f) on the ground that said State and Federal regulations conflict with the Food Stamp Act and deny due process and equal protection under the Federal Constitution. The judgment order was entered October 10, 1975, and appears in the Jurisdictional Statement of Appellant Earl Butz, as Exhibits A and B, pp. 1a-25a.

A notice of appeal to this Court was filed by these Appellants on the 8th day of December, 1975, copy of which appears as Appendix A infra, pp. 1a. On February 2, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including March 7, 1976, and on March 2, 1976, granted a further extension of time to and including March 22, 1976.

Jurisdiction is conferred on this Court by 28 U.S.C. 1253 which permits a direct appeal by any party against whom an order for a permanent injunction was entered in a civil action required to be heard by a District Court of three judges.

This Court previously assumed jurisdiction of this case, then captioned as Kevin J. Burns, Commissioner, et al., vs. Karen Hein, et al., Sup. Ct. 73-1882. In the order being appealed from at that time, the three-judge panel had rejected the motion to interplead the Federal Government. Upon remand, Earl Butz, Secretary of Agriculture, was joined and the judgment now sought for review is entered against both the Commissioner of the Department of Social Services of the State of Iowa and the Secretary of Agriculture.

Questions Presented

I. Whether 7 C.F.R. 271.3(c)(1)(iii)(f), and the analogous Iowa regulations, Iowa Department of Social Services Manual, VII-

3-16(d), which disallows an itemized deduction for training transportation expenses for purposes of computing the income of food stamp recipients, conflicts with the Food Stamp Act or denies equal protection or due process in view of 7 C.F.R. 271.3(c)(1)(iii)(a), and Iowa's analogous regulation, which allow ten percentum of the training allowance, including transportation expense, as a uniform national standard?

II. Does this order contravene the Eleventh Amendment?

Statement of the Case

The Appellants, Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa, et al., adopt the Statement in the Jurisdictional Statement filed herein by the Appellant, Earl Butz, Secretary of Agriculture, as their statement except the provisions in the Iowa Statute creating the Iowa Individual Education and Training Plan are in Chapter 249C, 1973 Code of Iowa.

Pertinent Federal and State Laws and Regulations appear as Appendix B, pp 2a, *infra.*

THE QUESTIONS ARE SUBSTANTIAL

To permit the decision of the District Court to set aside a considered and studied judgmental administrative decision is an undue interference with the function of public officials charged with the administration of the Food Stamp Program. If permitted to stand, it could serve as a dangerous precedent in the administration of other State or Federally created programs.

In the past, this Court has granted petitions for certiorari in cases because of "the gravity of this holding to the administration of the tax laws, "*Rothensies v. Electric Battery Co.* (1946) 329 U.S. 296. 67 S. Ct. 271; and "Because of the importance of the question to the

proper administration of the revenue laws, we granted certiorari in all three cases," *C.I.T. v. Hansen* (1959) 79 S. CT. 1270, 360 U.S. 446; and the case in which were "decided important questions concerning the power of the war department," *Patterson v. Lamb* (1946) 329 U.S. 539, because of the "importance of the decision to the utilization of the public lands" *United States v. Coleman* (1968) 390 U.S. 599, 601; and "because of an apparent conflict on the Eleventh Amendment issue with the decision of the Court of Appeals. . ." *Edelman v. Jordon* (1973) 415 U.S. 651, 658.

Appellee Hein and her class are recipients of Aid to Families with Dependent Children (ADC) cash grants, although that fact does not show on the face of the Decision. As such, they are automatically eligible to participate in the Food Stamp Program and automatically entitled to make application to participate in Iowa's Individual Education and Training Plan.[1]

In view of the various State and Federal training and work programs which are attached to the walfare programs, and in view of the fact two other U.S. District Courts have reached opposite conclusions of the regulation struck down here, it appears that this question will be re-occurring in subsequent litigation until resolved by this Court. In *Chek v. Butz* (May 25, 1975) No. D. Calif., now on appeal to the Court of Appeals for the Ninth Circuit,[2] the challenged regulation was declared valid while in *Turchin v. Butz* (Dec. 31, 1975) D.C. Minn. 44 L.W. 2329, that Court held it invalid, citing this case, *Hein v. Burns*.

In a student loan case *Thomas v. Butz*, (Feb., 1976) U.S. Ariz. Civ.-73-336-Phx.-Cam. relied on *Hein*. It is to be appealed.

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[1]The Iowa legislature authorized this State Program in 1969 for individuals upon public assistance, the provisions of which appear in Ch. 249C, 1975 Code of Iowa. (Appendix p 5a, *infra*.) Iowa receives some federal funds through Title XX of the Soc. Sec. Act as explained in Appellant Butz' Jur. St. pp. 10-11.

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[2]No. 75-2843. Reply brief filed Mar. 4, 1976. Case awaiting hearing date. Dist. Ct. opinion not published.

I

THE REGULATION DOES NOT VIOLATE THE FOOD STAMP ACT AND DOES NOT VIOLATE THE DUE PROCESS NOR EQUAL PROTECTION PROVISIONS OF THE FEDERAL CONSTITUTION.

The offending regulation does not conflict with any express language in the Food Stamp Act and thus *Shea v. Vialpando* 416 U.S. 251 cited by the District Court (Jur. St. Butz, p. 15a) is not applicable. In *Shea* the decision turned on the term "any" appearing in §402(a)(7) of the Social Security Act.

It will be seen that the offending regulation, 7 C.F.R. 271.3(c)(1)(iii)(f), "deductions" when read together with the pertinent regulation 271.3(c)(1)(iii)(a), "exemptions", in the light of the administrative explanation (all of which the District Court failed to consider), does not conflict with the purpose of the Food Stamp Act and does not violate equal protection nor due process rights.

Congress, instead of defining "income and other financial resources, including both liquid and nonliquid assets," left that task to the expertise of the Secretary of Agriculture "in consultation with the Secretary of Health, Education, and Welfare" to establish uniform national standards of eligibility." 7 U.S.C. 2014. Beneficiaries of the Act were favored with "exemptions" and "deductions", the regulations concerning such, were promulgated under the "general" rule making authority since there was no provision in the Act directing the Secretary to make any exceptions to consideration of gross income. 7 U.S.C. 2013(c).

The Secretary in drafting the "exemption" of ten percent of the "training allowance" at that place *took into consideration any "transportation costs"*. "It was also determined that the administrative burden of determining and verifying the expenses

for the infinite variety of other outlays which may be incurred for education would be undue. Further, these other expenses, because of personal preference or otherwise, vary greatly from person to person and thus from household to household." The Secretary restricted the amount that could be "deducted" to items of tuition and mandatory school fees since the "student's ordinary cost of living" and "other expenses" because of personal preference or otherwise, vary greatly from person to person and thus household to household."[3]

It was well within the administrative judgment to allow a ten percent across the board "exemption" (in lieu of itemization of personal preference expenditures) in establishing said uniform national standards of eligibility. This recognition that food stamp recipients have some control over their food buying power meets the goal of Congress "that food stamps should be used to supplement, not substitute for, the normal buying power of low income families." Legislative History P. L. 91-671, U.S. Code Cong. and Adm. News, p. 6034.

This rationale alone should be sufficient, but there are others, as hereinafter noted.

The District Court draws two classifications, thusly, "Food stamp recipients who are receiving a transportation allowance constitute one class, those not receiving such an allowance the other." (Jur. St., Butz, p. 16a) It will be hereafter shown that those within the first classification are equally as well off food-wise as those who are not in any training program.

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[3]Letter from Claude T. Coffman, Deputy General Counsel, Department of Agriculture, dated March 11, 1974, filed with Motion for New Trial March 13, 1974, as part of the record herein. (see page 2, Appendix C, p. 7a, *infra*)

Those in the first group, receive a flat $44.00 "training allowance" in a State warrant separate from their ADC check whether or not they need it for commuting, i.e., those living where the school is located do not need this allowance for commuting and thus have $44.00 per month available for food purchases. Likewise, those living at a distance, such as Appellee Hein, has the free choice of moving to the site of the school and being able to use her $44.00 per month "training allowance" to purchase food (and without losing her ADC cash grant, *Shapiro v. Thompson* (1968) 394 U.S. 618.)

Everyone in this classification is treated alike, i.e., from this "training allowance" ten percent is "exempted" and the tuition and mandatory fees are deducted. (7 C.F.R. 271.3(c)(1)(iii)(a); 7 C.F.R. 271.3(c)(1)(iii)(f). These two analogous regulations appear in the Iowa State Department of Social Services Manual at VII-3-2264.1 and VII-3-16.(d).) Also, everyone in this classification pays $58.00 for $94.00 worth of stamps.

Likewise, those comprising the second classification receive equal treatment and everyone therein has the option to buy $96.00 worth of stamps for $46.00.

As between the two classifications, then, there is a compensating factor. By exercising their residency options, those within the first classification have $44.00 with which to purchase food for which they pay $12.00 more for food stamps than those in the second classification. One has the advantage in cash, the other in food stamp costs.

Another rationale for the regulation is that it could well serve to deter some individuals from unduly prolonging their education, thus achieving the goal of Congres "to assure" that "the job training provisions of the amendment are not abused". . .by "some individuals". . ."becoming near permanent students by attending training classes in a multiplicity of subjects." (Legislative

History Pub. Law 91-671, amending the Food Stamp Act of 1964, U.S. Code Congressional and Administrative News 91st Congress 2d Session p. 6035.) Such is a reasonable rationale within the meaning of *Dandridge v. Williams* (1970) 397 U.S. 471.

Another rational relationship to a legislative goal is to prevent an erosion of Iowa's wholly State-created training plan wherein the "training allowance" is granted.

This regulation approves Iowa's election to grant the flat monthly allowance rather than assume the burden of determining and verifying itemized travel expenses. Were itemization required, it could cause Iowa to eliminate the training allowance altogether. "Welfare benefits are not a fundamental right, and neither the State nor Federal Governments are under any sort of constitutional obligation to guarantee minimum levels of support." *Lavine v. Milne* (1976) 44 L.W. 4295, footnote 9. A similar rationale was sufficient in *Richardson v. Belcher* (1971) 404 U.S. 78.

The "irrebutable presumption" due process argument was likewise rejected in *Lavine v. Milne* supra and *Weinberger v. Salfi* 320 U.S. 749.

II

THE ORDER VIOLATES THE ELEVENTH AMENDMENT

The Court ordered the defendants to recompute the adjusted net income for each person presently in the Food Stamp Program and make a forward adjustment by reducing the price for coupons in future months by whatever amount necessary for as many months as necessary so as to fully compensate the recipient financially. (Jur. St., Butz, p. 23a) Making this adjustment for actual travel expenditures made by every individual who since 1969, received the flat "training allowance"; among the current 40,109 food stamp recipients, will be very costly. And, as the State of Iowa must pay

one-half of the costs (7 U.S.C. 2024), the judgment entered against the State of Iowa Commissioner of Social Services conflicts with *Edelman v. Jordon*, (1973) 415 U.S. 651, wherein this court at p. 677 said:

> "Though a §1983 action may be instituted by public aid recipients such as respondent, a Federal Court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief, *EX PARTE YOUNG, supra* (1908) 209 U.S. 123, and may not include a retroactive award which requires the payment of funds from the state treasury, *Ford Motor Co. v. Department of Treasury, supra* (1945) 323 U.S. 459."

The three District Court decisions cited by the District Court were decided prior to Edelman.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court note probable jurisdiction.

Respectfully submitted,

RICHARD C. TURNER
Attorney General of Iowa

LORNA LAWHEAD WILLIAMS
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Attorney General

APPENDIX A
IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Nov. 7, 1975, R.E. Longstaff, Clerk,
U. S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFFS

vs.

KEVIN J. BURNS, ET AL., DEFENDANTS

Notice of Appeal

Notice is hereby given that the state defendants hereby appeal to the Supreme Court of the United States, pursuant to 28 U.S.C. 1253 and 2101, from the judgment of the three-judge District Court entered in this action on October 10, 1975.

DATED at Des Moines, Iowa, this 8th day of December, 1975.

Respectfully submitted,

RICHARD C. TURNER
Attorney General of Iowa

LORNA LAWHEAD WILLIAMS
Special Assistant
Attorney General

Attorneys for Defendants,
State of Iowa

APPENDIX B

PERTINENT CONSTITUTIONAL PROVISIONS

ELEVENTH AMENDMENT, UNITED STATES CONSTITUTION

Amendment 11

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

FIFTH AMENDMENT, UNITED STATES CONSTITUTION

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION

Amendment 14

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL LAW

FOOD STAMP ACT

7 U.S.C. §2914

(c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

7 U.S.C. §2014

(b) The Secretary, *in consultation with the Secretary of Health, Education, and Welfare*, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household

income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility: (emphasis supplied.)

Employment of Able-bodied adults; excepted persons; refusal of work during strike or lockout; definition.

(c) Notwithstanding any other provisions of law, the Secretary shall include in the uniform national standards of eligibility to be prescribed under subsection (b) of this section a provision that each State agency shall provide that a household shall not be eligible for assistance under this chapter if it includes an able-bodied adult person between the ages of eighteen and sixty-five *(except* mothers or other members of the household who have the responsibility of care of dependent children or of incapacitated adults, *bona fide students* in any accredited school or training program, or persons employed and working at least 30 hours per week) who either (a) fails to register for employment at a State or Federal employment office or, when impractical, at such other appropriate State or Federal office designated by the Secretary, or (b) has refused to accept employment. . . . (emphasis supplied.)

FEDERAL REGULATIONS

7 C.F.R. §2713

(c) *Income and resource eligibility standards of other households.* Each State agency shall apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

7 C.F.R. §271.3(c)

(1) *Definition of income.* To compute maximum monthly income for purposes of determining eligibility:

(i) Income shall mean any of the following, but not be limited to:

(g) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(j) Scholarships, educational grants. . .

7 C.F.R. §271.3(c)

(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other deductions from income shall be allowed):

(a) Ten percentum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month. This deduction shall be made before the following deductions.

(f) Tuition and mandatory fees assessed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation).

CODE OF IOWA, 1973

234.11 *Duties of the county board - food stamp program.* . . .

Each county shall participate in federal commodity or food stamp program.

249C.3 *Work and training program.* The commissioner shall establish a work and training program for persons and members of families receiving public assistance. . . .

249C.15 *Rules adopted.* The commissioner shall adopt rules to implement this chapter and achieve its purposes.

IOWA DEPARTMENT OF SOCIAL SERVICES MANUAL

FOOD STAMP PROGRAM

VII-3-2264.1 Deductions

Ten percent of income from compensation for services performed as to an employee or monies received as a training allowance not to exceed $30 per month per household. The ten percent shall be computed based on gross income from the following sources prior to any mandatory or other deductions.

VII-3-16 Income Deductions

d. The total payments which are made to cover specific training cost; i.e., babysitting, child care, books, tuition, etc., when the recipient is participating in a training program sponsored by local, county, state, or federal government.

Note: Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible.

INDIVIDUAL EDUCATION AND TRAINING PLANS

XIII-8-4 Payment

a. For a full time training plan the allowance is $44 per month.

APPENDIX C

Letter (page 2) from Claude T. Coffman, Deputy General Counsel, Department of Agriculture, dated March 11, 1974, filed as part of the record herein on March 13, 1974.

Further, the regulations go on to provide for certain deductions and exclusions from income for the purpose of determining net income for the Food Stamp Program. Section 271.3 provides, with respect to the issue of exclusions, in pertinent part as follows:

> The following shall not be considered income of the household: • • • (f) ten percentum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month.

This "exclusion" is designed to cover certain expenses which it may be anticipated will ordinarily be incurred by households in connection with their employment or training, including transportation costs.

Nowhere else in the Federal regulations governing the program is there any provision for any exclusion or deduction specifically for transportation costs. There is a deduction provided in section 271.3 of the regulations for: "Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships and veteran's educational benefits." These deductible expenses, as the regulations specifically provide, are limited to *tuition* and *mandatory* school fees. Other educational expenses may not be deducted in determining a household's net income.

When these regulations were originally under consideration, it was administratively determined that tuition and

mandatory fees are readily determinable, are uniform for all students, and are the primary costs of education (particularly college education) over and above a student's ordinary costs of living. It was also determined that the administrative burden of determining and verifying the expenses for the infinite variety of other outlays which may be incurred for education would be undue. Further, these other expenses, because of personal preference or otherwise, vary greatly from person to person and thus from household to household. For these reasons, the program regulations, and the related instructions of the Food and Nutrition Service which the State agencies are bound to follow by provision of the program regulations, limit educational expenses which may be deducted from income to the costs of (1) tuition, and (2) mandatory fees assessed by the educational institution.

In view of the above, it is the position of this Department that the only appropriate allowance by any State agency for transportation costs of participants in the program are those that are included in the. . .